IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

Crl.MC.No. 2636 of 2007()

C.R.NO.18/02 OF PATHANAPURAM EXCISE RANGE

PETITIONER: ACCUSED

PRASANNAN, S/O.MANNAVAN, AGED 44 YEARS,
RESIDING AT THULASI BHAVAN, PLATHARA,
ELICADU P.O., MANJAMON KARA, VILAKKUDY VILLAGE,
PATHANAPURAM TALUK, KOLLAM DISTRICT.

BY ADV. SRI.R.SURAJ KUMAR

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE EXCISE INSPECTOR,
PATHANAPURAM EXCISE RANGE,
PATHANAPURAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2636 of 2007

Dated this the 18th day of August, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 55(g) of the Kerala Abkari Act. The alleged incident took place on 15.04.02. The petitioner was not arrested in the course of investigation. Investigation is still pending, it is submitted. According to the petitioner, he is absolutely innocent. He is not responsible for his not being arrested earlier. He had no idea of the pendency of such a crime registered against him.

2. According to the petitioner, he is absolutely innocent. He is willing to surrender before the learned Magistrate. He apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He therefore prays that appropriate directions may be issued under Section 438 and/or 482 Cr.P.C.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons

must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail. I find no reason in this case to invoke the extraordinary equitable discretion under Section 438 Cr.P.C or the extraordinary inherent jurisdiction under Section 482 Cr.P.C. The petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

5. This Crl.M.C is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-